

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIMEDX GROUP, INC.,)	
)	
Plaintiff,)	
)	CASE NO. 1:16-cv-11715-MSS-SIS
-vs-)	
)	
MICHAEL FOX,)	
)	Judge Manish S. Shah
Defendant.)	
)	
)	Magistrate Judge Sidney I. Schenkier
MICHAEL FOX,)	
)	
Counter-Plaintiff)	
)	
-vs-)	
)	
MIMEDX GROUP, INC.,)	
)	
Counter-Defendant.)	
)	

**PLAINTIFF/COUNTER-DEFENDANT MIMEDX GROUP, INC.’S MOTION FOR
JUDGMENT ON THE PLEADINGS AS TO COUNT FOUR OF
DEFENDANT/COUNTER-PLAINTIFF MICHAEL FOX’S SECOND AMENDED
COUNTERCLAIM**

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Plaintiff/Counter-Defendant MiMedx Group, Inc. (“MiMedx”) by and through its undersigned counsel, respectfully moves this Court for Motion for judgment on the pleadings as to Count Four of Defendant/Counter-Plaintiff Michael Fox’s (“Fox”) Second Amended Counterclaim (“SAC”) (ECF No. 147), entitled Whistleblower Retaliation in Violation of Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). This Motion is made on the ground that Fox cannot be a “whistleblower” as that term is defined under the Dodd-Frank Act because he has not alleged (and cannot allege) that he submitted a report about MiMedx to the

Securities Exchange Commission (“SEC”) “in a manner established” by the SEC at any time prior to the alleged post-termination retaliation by MiMedx. 15 U.S.C. § 78u-6(a)(6).

In further support of this Motion, MiMedx submits and incorporates by reference its supporting Memorandum of Law, filed contemporaneously herewith.¹

WHEREFORE, MiMedx respectfully requests that this Court issue an order dismissing Count Four of Fox’s SAC with prejudice.

Dated: March 8, 2018.

Respectfully submitted,

PLAINTIFF MIMEDX GROUP, INC.

/s/ David M. Pernini

Joseph D. Wargo, *pro hac vice*, Georgia Bar
No. 738764

Shanon J. McGinnis, *pro hac vice*, Georgia
Bar No. 387598

David M. Pernini, *pro hac vice*, Georgia Bar
No. 572399

WARGO & FRENCH, LLP
999 Peachtree Street, NE, 26th Floor
Atlanta, Georgia 30309

Telephone: (404) 853-1500

Facsimile: (404) 853-1511

E-mail: jwargo@wargofrench.com

E-mail: dpernini@wargofrench.com

E-mail: smcginnis@wargofrench.com

SIDLEY AUSTIN LLP

Ami N. Wynne

Jason G. Marsico

One South Dearborn

Chicago, Illinois 60603

Phone: (312) 853-7000

Fax: (312) 835-7036

Email: awynne@sidley.com

Email: jmarsico@sidley.com

*Counsel for Plaintiff
MiMedx Group, Inc.*

¹ Pursuant to this Court’s rules, MiMedx notes that Fox objects to this motion.

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record for the parties in this action:

Christopher S. Griesmeyer
Adam C. Maxwell
Greiman, Rome & Griesmeyer, LLC
Two North LaSalle, Suite 1601
Chicago, Illinois 60602
cgriesmeyer@grglegal.com
amaxwell@grglegal.com

Clayton D. Halunen
Christopher J. Moreland
Mack H. Reed
Stephen M. Premo
Halunen Law
IDS Center, Suite 1650
80 South 8th Street
Minneapolis, MN 55402
halunen@halunenlaw.com
moreland@halunenlaw.com
reed@halunenlaw.com
premo@halunenlaw.com

/s/ Ami N. Wynne

Ami N. Wynne

SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
Phone: (312) 853-7000
Fax: (312) 835-7036
Email: awynne@sidley.com